

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:

LARRY FREDERICK and
SHARON FREDERICK,

Joint Debtors,

LARRY FREDERICK and
SHARON FREDERICK,

Movants,

vs.

Bankruptcy No. 18-70870-JAD

Chapter 11

Document No.

Related to Doc. Nos.: 187

SALE HEARING Date and Time:
March 16, 2021 at 10:00 a.m.

M&T BANK, THE UNITED STATES OF
AMERICA FARM SERVICE AGENCY,
CARGILL, INC., SUSQUEHANNA
COMMERCIAL FINANCE, INC.,
GROWMARK FS, LLC, FS FINANCIAL
SERVICES, LLC, WELLS FARGO
VENDOR FINANCIAL SERVICES, LLC,
BLAIR COUNTY TAX CLAIM BUREAU,
PENNSYLVANIA DEPARTMENT OF
REVENUE, AND THE INTERNAL
REVENUE SERVICE,

Respondents.

**ORDER OF COURT APPROVING BID PROCEDURES AND EXPENSE
REIMBURSEMENT**

AND NOW, to-wit, this 5th day of February, 2021, after notice and opportunity for hearing, and the Court having considered the Debtors' Expedited Motion to Approve Bid Procedures and Expense Reimbursement, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

1. The Debtor's Expedited Motion to Approve Bid Procedures and Expense Reimbursement (the "Motion") is Granted;

2. The Following Bid Procedures shall govern the conduct of the sale of the Sale Assets (as defined in the Motion) which sale shall be conducted on March 16, 2021 at 10:00 am via Zoom per the undersigned's Zoom Hearing Procedures (the "Sale Hearing"):

Competing Bids will be solicited for the Frederick Road Properties and Personal Property (together as one lot) and for Cove Lane (individually and in bulk with the Frederick Road Properties and Personal Property) and the Bankruptcy Court shall determine the highest or best bid for the Sale Assets at the Sale Hearing.

(a) Qualified Bidders; Qualified Bids. In order to be eligible to bid on the Sale Assets at the Sale Hearing, each bidder, must be determined to be a **"Qualified Bidder,"** which is a bidder that has submitted a Qualified Competing Bid (as defined below). Within two (2) business days after Counsel for the Debtors receives from a potential bidder all of the materials required to be submitted pursuant to paragraph (b) below, the Debtors shall make an initial determination, subject to final review and approval by the Court, whether a potential bidder is a Qualified Bidder and has submitted a Qualified Competing Bid. After such initial determination is made, the Debtors, through Counsel, shall notify the potential bidder of the decision.

(b) Submission of Bid. Unless otherwise agreed upon by the Debtors, in order to be considered for status as a Qualified Bidder, a potential bidder must deliver to Ryan J. Cooney, 223 Fourth Ave, 4th Floor, Pittsburgh, PA 15222 (email: rcooney@lampplaw.com) at least three (3) business days prior to the Sale Hearing a written offer for the purchase of the Frederick Road Properties and Personal Property, Cove Lane, or all of the Sale Assets at a price equal to or exceeding the respective Minimum Overbids (as hereinafter defined) and accompanied by the following (**"Qualified Competing Bid"**):

- (i) A fully executed Asset Purchase Agreement (APA), the form of which is attached to the Motion as **EXHIBIT A**. In the event that the bidder submits an APA with any terms that are not the same as the form APA, those terms must be noted in redline in the executed version of the APA submitted by the bidder.
- (ii) Proof, in a form satisfactory to the Debtors, of the bidder's financial ability to consummate its offer to purchase Debtors' real property. **No financing contingencies will be accepted;**

- (iii) An earnest money deposit of \$5,000 in cash, a cashier's check, certified check or wire transfer payable to Robert O Lampl as Escrow Agent for Larry and Sharon Frederick; and
- (iv) A bid in the minimum amount of:

For the Frederick Road Properties plus the Personal Property:

\$2,150,000.00 plus the assumption of the Debtors' obligations to Growmark to the extent of Growmark's allowed secured claim under 11 USC §§ 506 and 510, if any, on the Personal Property (the "Minimum Overbid for the Frederick Road Properties plus the Personal Property")

For Cove Lane:

\$860,000.00 (the "Minimum Overbid for Cove Lane")

For all Sale Assets:

\$3,010,000.00 plus the assumption of the Debtors' obligations to Growmark to the extent of Growmark's allowed secured claim under 11 USC §§ 506 and 510, if any, on the Personal Property (the "Minimum Overbid for all of the Sale Assets")

The Debtor shall promptly provide copies of all information submitted by potential bidders to the M&T Bank, the FSA and Growmark.

(c) Participation in Auction; Successful Bidder. If one or more Qualified Competing Bids are received, an auction will be conducted at the Sale Hearing. The bidding will start at the Minimum Overbids for each lot. Each Qualified Bidder shall be permitted to raise their bid at the Sale Hearing until all bidders cease bidding or raising their bids. Each successive bid must be in the following increments:

For the Frederick Road Properties plus the Personal Property: \$25,000.00

For Cove Lane: \$10,000.00

For all Sale Assets: \$25,000.00

(d) Court Approval. At the Sale Hearing, the Debtors will be seeking approval of the sale to the successful bidder(s), and entry of an Order(s) authorizing and approving the transactions contemplated by the Form APA or other APA as the case may be (the "Sale Order"). The Sale Order(s) shall be acceptable in form and substance to the Debtors and the successful bidder.

(e) Inspection. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge: (i) that it had a full and fair opportunity to inspect and examine the Sale Assets to be purchased and all pertinent documents and information provided by the Debtors, with respect to the Sale Assets, prior to making its offer, and that each such bidder relied solely on that review and upon its own investigation (including through its own professional representatives and advisors) and inspection of the property in making its offer; and (b) that it is not relying upon any written or oral statements, representations, or warranties of the Debtors or any other person or entity, or any of their respective officers, directors, employees, agents, attorneys, professional and representatives.

(f) Deposits. Deposits will be held in escrow by Robert O Lampl and will be returned to such affected bidder if such bidder is not the successful bidder (as such terms are defined herein), within ten (10) business days following the Sale Hearing. If the failure by the successful bidder to consummate the purchase is the result of such successful bidder's breach of, or default or failure to perform under any successful bidder sale documents or the terms of these Bidding Procedures, said bidder's deposit shall be forfeited to the Debtors and the Debtors shall thereupon have the right to assert all rights and remedies provided under applicable law.

(g) Liens. The Sale Assets shall be sold AS IS/WHERE IS, free and clear of all liens, claims, interests, and encumbrances, existing as of the date of the closing of the transactions contemplated by and in accordance with the successful bidder's purchase agreement and the Sale Order(s), subject only to title exceptions and other assumed liens, claims, interests and encumbrances that are mutually agreed to by the Parties.

(h) Back-Up Bidder. If an auction is conducted, the party with the next highest and best Qualified Competing Bid, as determined by the Court, shall serve as a back-up bidder ("the Back-up Bidder") and keep such bid open and irrevocable until the earlier of 5:00 p.m. (prevailing Eastern time) on the date which is (i) thirty (30) days after the date of the Sale Hearing (the "Outside Back-up Date") or (ii) the closing of the Sale transaction with the Successful Bidder. The Back-Up Bidder's deposit will be returned by no later than the third (3rd) business day after the earlier to occur of: (a) the closing of the sale transaction with the Successful Bidder or (b) the Outside Back-up Date. Following the Sale Hearing, if the Successful Bidder fails to consummate an approved Sale because of (a) the failure of a condition precedent beyond the control of either the Debtors or the Successful Bidder or (b) a breach or failure to perform on the part of such Successful Bidder, the Back-up Bidder will be deemed to be the new Successful Bid, and the Debtors will be authorized to consummate the Sale with the Back-up Bidder without further order of the Court.

(i) Closing. Closing shall occur within thirty (30) days after the Sale Hearing.

3. If the Stalking Horse Bidder is not the successful bidder for the Frederick Road Properties and Personal Property and If any other person or entity closes on the

sale of the Frederick Road Properties and Personal Property as the result of a submission of a bid at the Sale Hearing in excess of the consideration set forth in the Eric Frederick Agreement, the Debtors are authorized to pay an Expense Reimbursement in accordance with, and as provided in, the Eric Frederick Agreement (as defined in the Motion) to Eric and Jennifer Frederick out of the proceeds from the sale without further Order of Court.

A handwritten signature in black ink, appearing to be "JAD", with a horizontal line underneath it. To the right of the signature, the letters "sjk" are printed.

Jeffery A. Deller
United States Bankruptcy Court Judge

FILED
2/5/21 4:59 pm
CLERK
U.S. BANKRUPTCY
COURT - WDP